IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

CRP.No. 909 of 2003

AGAINST THE JUDGMENT DATED 11.12.2001 IN AS.224/1993 OF THE DISTRICT COURT, THRISSUR FROM OS.479/1985 OF MUNSIFF COURT,CHAVAKKAD

REVN. PETITIONER: APPELLANT/PLAINTIFF

UKRU,
S/O. PORATHUR CHERU,
PUTHENPETTA ANGADI, KUNNAMKULAM VILLAGE,
NOW RESIDING AT KANNALASHY ALPARAMBU DESOM,
CHOWANNUR VILLAGE, TALAPPILLY TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.N.P.SAMUEL

RESPONDENT: RESPONDENT/DEFENDANT

ANTONY,
S/O. CHIRAMMEL CHAKKU,
MATHRUBHOOMI AGENT,
KUNNAMKULAM AYYAPPATH ROAD,
KUNNAMKULAM VILLAGE, TALAPPILLY TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.SANTHEEP ANKARATH

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

C.R.P. NO. 909 OF 2003 F

Dated this the 19th day of October, 2007

O R D E R

Plaintiff in O.S.No.479 of 1985, on the file of the Court of the Munsiff of Chavakkad, is the revision petitioner. The suit was filed by the revision petitioner against the respondent/defendant for realization of the amounts due under Ext.A1 pronote, dated 29.4.1983. The case of the plaintiff is that the defendant borrowed Rs.10,000/- from the plaintiff and Ext.A1 pronote was executed on 29.4.1983. Towards the liability, the defendant paid an amount of Rs.2,000/- on 9.11.1983 and Rs.7,000/- on 26.7.1984. According to the plaintiff, the balance amount payable to him was Rs.3,000/- and this amount with interest was claimed in the plaint.

2. The defendant admitted execution of the pronote and his liability under the pronote. According to the defendant, apart from the payment of Rs.2,000/- on 9.11.1983, he had paid Rs.8,000/- on 12.11.1983 to the plaintiff as per a cheque. His further case is that when he met the plaintiff for payment of the balance amount under the transaction, the plaintiff borrowed a sum of Rs.7,000/- from him and after adjusting the amount due to the plaintiff, the plaintiff is liable to pay to the defendant a sum of Rs.7,623/-. The defendant put forward a counter claim for this amount.

3. The trial court dismissed the plaint claim and allowed the counter claim as per judgment and decree dated 14.12.1988. The plaintiff filed A.S.No.187 of 1989 before the District Court, Thrissur. In that appeal, the judgment of the trial court was set aside and the matter was remanded for fresh consideration granting an opportunity to the plaintiff to file a rejoinder. Accordingly, the plaintiff filed a rejoinder statement, in which, he contended that the payment of Rs.8,000/- on 12.11.1983 was not towards the plaint transaction, but an earlier transaction between the parties, by which, the plaintiff had granted another loan to the defendant as per a cheque issued by the plaintiff in favour of the defendant. In the rejoinder, the plaintiff contended that the counter claim put forward by the defendant is unsustainable.

4. After remand of the case to the trial court, PW1 was recalled and examined again and two additional documents were also marked as Exts.A5 and A6. No fresh evidence was adduced by the parties.

5. The trial court considered the oral and documentary evidence and came to the conclusion that the case put forward by the plaintiff cannot be accepted. According to the trial court, the plaintiff failed to put forward the true facts in the plaint or in the rejoinder statement. The trial court found that the contentions put forward by the defendant are true and that

the counter claim is genuine. Accordingly, the trial court disallowed the claim made by the plaintiff and by allowing the counter claim the plaintiff was directed to pay to the defendant a sum of Rs.7,623.27 with interest on Rs.6,339.62 at 12% per annum from 31.3.1986 till the date of payment, with costs. Again, the plaintiff took up the matter in appeal before the District Court, Thrissur as A.S.No.224 of 1993. The Appellate Court considered the documentary and oral evidence in the case and concurred with the view taken by the trial court.

6. Learned counsel for the revision petitioner submitted that the view taken by the courts below is unsustainable and that the courts below were not justified in holding that the counter claim is sustainable. The counsel pointed out that the courts below were not right in holding that the plaintiff failed to prove the cheque transaction entered into between the parties before Ext.A1 transaction and, herefore, interference is called for in the Revision. After going through the judgments of the courts below and considering the evidence on record, I am of the view that no interference is called for in the well considered decisions rendered by the courts below. The findings were rendered by the courts below on appreciation of evidence and on consideration of the facts and circumstances of the case. There is no failure of justice or illegality or impropriety warranting interference under Section 115 of the Code of Civil Procedure.

The Civil Revision Petition lacks merits and it is accordingly dismissed. However, no order as to costs.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

C.R.P.NO. 909 OF 2003

O R D E R

19th October, 2007